1952

File No. O Requisitioning/52 Pt II

Legal Department

A BRANCH

Subject:—

Opinions under the Bombay Land Requisition Act, 1948

[For previous pps. pl. see pt. I]

File No. O Requisitioning/52 Pt II

Gen. 194 c.

1148

CONTENTS.

Legal Department File No. O. Requisitioning / 52 Pt.II.

Sr.No.	R.I. / O.No.	Subject.	Pages.
		Opinions under the Bombay Land Requisition Act, 1948.	
1.	9102 31.5.52.	Whether requisition of premises for housing the office of the All India Bobbin Manufacturers' Associations which not a profit earning acquisition, can be considered as for a public purpose.	1 - 4.
2.	9776 12.6.52.	Whether it would be in order to treat the paying guest arrangement as an unauthorised sub-letting.	5 - 8.
3.	9777 12.6.52.	Re: Requisition of office premises under sec. 5 of the Act on the ground that the occupants are sub-tenants and not licensees.	9 - 10.
4.	10067 17.6.52.	Whether requisition of premises for housing a homeless person can be considered to be Union purpose under the Act.	11 - 14.
5.	10230 19.6.52.	Re: Requisition of premises under sec. 6(4)(b) of the Act. Whether the landlord will be entitled to the rent from the date of the passing of the order or from the date are which actual possession is handed over to the allottee.	15 - 18.
6.	10215 19.6. 52.	Re: Occupation of rooms by some person in common with the landlord people who are intimately known to him ..... Whether the rooms can be requisitioned either under sec. 5 or sec.6 of the Act, on the ground that Rs.65/- were being paid every month to the landlord.	19 - 20.
7.	10217 19.6.52.	Re: Request from R.D.(Accom:) to H.D. to lend the services of the Police Prosecutor for conducting certain cases on their behalf.	21 - 24.

ARD 27-8

P.T.O.

Sr.No.	R.I. / O.No.	Subject.	Pages.
8.	11060 4.7.52.	Re: Derequisitioning of rooms as the landlord was required to comply with the Municipal requisition to pull down the newly erected structure. Whether, when the Municipality has withdrawn its requisition it would be proper again to requisition the rooms in question under sec. 5 of the Act.	25 - 28.
9.	11372 10/7/52.	Secs. 8(1) and 15.- Re:- Determination of compensation under sec.8 of the Act in respect of property requisitioned under the said Act. Whether the Collector who has been authorised under sec. 15 to fix the compensation, can delegate that power to a Mamlatdar or any other subordinate office under him.	29 - 30.
10.	9974 14.6.52.	Whether derequisitioning of the lands which were originally requisitioned under the D. of India Act., can be made retrospectively.	31 - 36.
11.	11181 7.7.52.	Secs. 5(1) and 6(4)(a).- Whether the requisitioning of premises for housing Nira Centres which are run by Govt. would be for a state purpose under section 5(1) or 6(4)(a) of the Act.	37 - 38.
12.	10614 26.6.52.	Question whether certain flat has been occupied by the owner, landlord or the tenant for a continuous period of 6 months so as to operate as bar to the requisition thereof under sec. 5 of the Act.	39 - 40.
13.	5839 16.4.52.	Re: Cancellation of permission granted to Landlord to occupy the block which was reported to be vacant, for his own bonafide requirements. Whether the Block can now be requisitioned under sec.6(4)(a) on the ground that the landlord is not occupying the same.	41 - 44.
14.	12475 29.7.52.	Re: Terminal compensation in respect of lands requisitioned under rule 75A(1) of the Defence of India Rules. Whether payable to the present owner of the land. (Pl.see R.L.A's No.13462/16.8.52)	45 - 48

5 Cs. M.V.N. 23/8

Sr.No.	R.I. / O.No.	Subject.	Pages.
15.	12699 31/7/52.	Re: Requisition order issued under sec. 6(4)(a) of the Act. Question regarding validity of -	49-50.
16.	13291 14.8.52.	Re: Requisition of premises under sec. 5(1) of the Act... filing of a petition in the High Court by a person who claims to be the tenant. Order of the Court that the requisition order is in - effective as the same was not received by the petitioner. Whether it would be legal to cure the technical defect in the proceedings by now serving ..the order on the petitioner.	51-54.
17.	13462 18.8.52.	Re: R.L.A's opinion No. 12475 dt. 29/7/52.- Re: Payment of terminal compensation to the present owner of the requisitioned property.	55-58.
18.	14146 30.8.52.	Whether to requisition premises for the chaplain of Parel and Sahara would be a public purpose within the meaning of the Act.	59-62.
19.	14450 5.9.52.	Whether allotment of requisitioned premises to a refugee would be a public purpose.	63-64.
20.	15262 17.9.52.	Sec. 8(3).- Re: Fine limit fixed for filing an appeal against the decision of the requisitioning authority fixing the compensation in respect of requisitioned property.	65-68.
21.	15476 20.9.52.	Re: Requisitioning of premises under sec. 5 of the Act on the ground that a particular person was not residing there for a continuous period of six months.	69-70.
22.	15454 19.9.52.	Re: Whether it is necessary to pass fresh de- requisitioning order when once it was passed but the actual possession of the property was not handed over to the landlady.	71-74.

P.T.O.

Sr. No.	R.I. / O.No.	Subject.	Pages.
23.	16293 4.10.52.	Whether the premises which were requisitioned to accommodate the first informant can now be derequisitioned as the court set aside the requisition order and can be re-requisitioned again under sec.6(4) for housing a Government Servant.	75-78.
24.	16329 4.10.52.	Whether to provide office accommodation for the Employees State Insurance co-operation out of the pool of requisitioned premises at the disposal of the State Govt. would be a public purpose.	79-80.
25.	17244 20.10.52.	Sec.6(4).- Whether the business premises could be requisitioned for residential purposes for housing a Bombay Govt. servant.	81-84.
26.	17759 27.10.52.	Whether requisitioning premises for a lecturer in the Bombay University could be a public purpose	85-86.
27.	17245. 20.10.52.	Re: Compelling landlord to carry out repairs under the Act to the premises which were requisitioned under the Defence of India Rules and continued to be so under the Requisitioned Land(C.of P) Act, 1947.	87-88.
28.	17769 27.10.52.	Whether it is necessary to specifically delegate by notification under sec. 15 of the Act the powers under sec. 6(4)(b) of the said Act to the Controller of Accommodation, the Asstt.Controller and Accommodation officers.	89-92.
29.	18802 12.11.52.	Whether the derequisitioning order under sec.6 of the Requisitioning and Acquisition of Immovable Property ordinance, 1952, passed by the Collector who was not appointed as "competent Authority" under sec. 2(b) of the said ordinance, is legal.	93-96.

Sr.No.	R.I. / O.No.	Subject.	Pages.
30.	O-497 1.10.52.	Whether the lands requisitioned for Central Government purpose can be acquired by State Govt. for State purpose availing of the provisions of Bombay Act I of 1951.	97-102.
31.	19031 15.11.52.	Re: Providing more suitable or economical accommodation to a Government servant who is already having accommodation Whether this would be a public purpose.	103-104.
32.	17973 30.10.52.	Whether requisition of premises for co-operative society of Nurses is a public purpose.	105-112.
33.	210 26.11.52. (Marked to M(R.D))	Re: Requisition order issued prior to the amendment of sec. 6(4)(a) of the Act without any specific purpose mentioned therein. Whether it will be open to Govt. to allot the premises for any purpose provided it is a public purpose.	113-116
34.	19247 18.11.52.	Whether the excess amount paid to landlord due to a mistake in calculations of the compensation can be recovered as arrears of Land revenue.	117-120.
35.	21306 18.12.52.	Re:Requisition of a flat in a Foredun terrace, Parsee Colony, where there is a condition that only Parsee should be given an accommodation Whether the requisition premises if allotted to nonparsee the allottee concerned could be held liable for non-compliance of the condition.	121-122.
36.	1380-Confl. 12.12.52.	Re: Whether certain land can be requisitioned under the Act for certain company.	123-128.
37.	22101 30/12/52.	Secs. 8(1) and 8B.- Re: Payment of compensation to the owner in respect of requisitioned property.	129-132.

Office of the R.L.A.

Attention of Revenue Department (Accommodation) is invited to the R.L.A's opinion No. 323, dated 11th January 1952 where a similar question is discussed.

In such cases Revenue Department (Accommodation) should also ask for a copy of the Constitution and byelaws of the Association to facilitate closer scrutiny of the Association's claim.

Sd/- P.M.Lad,
29/5.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accommodation), No. 9102, dated the 31st May 1952.

4-Cs.
M.V.V.
18/8.

OFFICE OF THE R.L.A.

Except Shri Indroos' statement at page 17 ante who is no longer staying in flat No. 15, Mrs. M. Willmot (at page 13 ante) and Mr. Louis J.Fernandes (at page 13 ante) maintain and contend in their respective written statements that they are paying guests of Mr. A.A. Muchala. The statement of Shri M.J. Gazdar at page 37 ante also supports the statement of Mrs. A.A. Muchala that paying guests are staying in the flat No.15 for the last many years. Excepting the solitary statement of Shri Indroos who is not staying at present in flat No.15, there is no other cogent evidence to prove that the persons in question are not paying guests of Mr. A.A. Muchala but are his sub-tenants. Unless the Accommodation Department is able to collect more cogent evidence, it does not appear to be advisable to requisition the rooms as proposed by them. A written exchange letter mentioned in the statement of Shri Indroos at page 17 ante is not available; nor are the statements of ex-sub-tenants mentioned therein. Rooms Nos. 4,5 and 6 marked vacant in the sketch at page 24 ante will be deemed to be in the possession of Mrs. A.A. Muchala in the eye of law for her requirements; since actual occupation is not legally necessary.

Sd/- P.M.Lad,
11/6.

Remembrancer of Legal Affairs.

U.R. to R.D.(Accom.) No. 9776, dated the 12th June 1952.

4-Cs.
M.V.V.
18/8.

Office of the R.L.A.

The premises are office premises and even on the assumption that the occupants are subtenants and not licensees, it would be open to Government to requisition the premises under section 5 as none of the tenants or subtenants could be actually residing there. It is therefore unnecessary to consider whether they should be treated on the same basis as paying-guests in residential premises. Whether the premises should be requisitioned is a question of policy for Government to decide, having regard especially to the fact that notices to vacate have been served by Shri Vajifdar.

Sd/- P.M.Lad,
18/6.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accommodation), No. 9777, dated the 12th June 1952.

4-Cs.
M.V.V.
20/8.

Office of the R.L.A.

This case was discussed with Shri Seervai and It was agreed that we should maintain the order and defend it in Court. Secy. R.D. said that the landlord and the Solicitors who saw him in this connection were agreeable to let this flat be requisitioned for Shrimati Shivdasani in view of the special circumstances. It is true that the note recorded by Secretary R.D. is not quite explicit on the point of such agreement. However, Secy. R.D. assured us that he would be able to supplement it by an affidavit to the effect that the parties had so agreed. If that be so, the case can be taken out of the general rule regarding first informants etc. laid down by the High Court so far and can be successfully defended.

Sd/- P.M.Lad,
16/6.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom.) No. 10067, dated the 17th June 1952

4-Cs.
M.V.V.
20/8.

R.I. No. 11198
5/6/52.

Submitted.

Please see facts of this case in Dy. I.G.P. (C.I.D.), Bombay State's letter at p. 3 and H.D. notes at pp. 25-27 ante. It appears that the Controller of Accommodation issued orders under sec. 6(4)(b) of the Land Requisition Act, 1948 allotting the rooms in Lambi Chawl, Sukhlaji Street, Bombay to the Dy. Inspector General of Police on the the dates mentioned in the Statement at p. 19 ante (i.e. 47 on 4-2-50, 3 on 6-2-50, 4 on 21-2-50 and 3 on 3-3-50). As the rooms were not in habitable condition the landlord was asked to carry out repairs which he did and handed over actual possession of 54 rooms on 1-3-50 and 3 rooms on 8-3-1950. Rent for 54 rooms was paid to the owner from 1-3-50 and for 3 rooms from 8-3-50 but the landlord has demanded rent for all rooms from the date of the allotment order and in support of their demand has forwarded a copy of the High Court Judgment in the case of Hormusji Pallonji Arjanwalla V.State of Bombay (Appeal No. 409 of 1950). H.D. is of the view that as the orders were passed under sec. 6(4)(b) , the ruling would not apply and since the possession remained with the landlord until it was actually taken by the Dy. I.G.P. he would not be entitled to rent tillpm possession was given. The R.L.A. is requested to advise.

Sd/- P.S.Nadkarni/14.6

R.L.A. Sd/- P.M Lad/16/6.

4-Cs.
M.V.V.
20/8.

Office of the R.L.A.

It appears that immediately after the various orders under section 6(4)(b) of the Bombay Land Requisition Act, 1948 were served upon him, the landlord offered to deliver possession but the Police Authorities requested him to carry out the repairs. The landlord was under no liability to carry these out immediately. However he agreed to do so with a view to cause no inconvenience to the occupant later on and under the impression that his tenancy would commence from the date of the service of the order upon him. After service of the order, the landlord could not have let out the premises to anyone and he should be compensated for the period during which he was willing to hand over possession and the possession was actually taken from him. To this extent the judgment referred to by the landlord will apply to the present case also.

Sd/- P.M.Lad,
18/6.

Remembrancer of Legal Affairs.

U.R. to H.D. No.10230, dated the 19th June 1952.

4-Cs.
M.V.V.
20/8.

OFFICE OF THE R.L.A.

In his oral statement Shri Rao has stated that he was given two rooms which he was not using exclusively but in common with the landlord's people who are intimately known to him. The landlord's contention is that he was accommodated temporarily as a friend on account of his entreaties and on this point he (the landlord) is supported by Shri G.M. Nagarkar at page 45 ante. Although Shri Rao was having a separate use of the kitchen, on his own statement he was a lodger (licensee) and not a tenant within the meaning of sections 5 and 6 of the Land Requisition Act, 1948 and the fact that Rs. 65 per month were being paid will not improve the matter. Requisition under section 5 will be challenged on the ground of the land lord's occupation while requisition under section 6 may be challenged on the ground that premises are not premises within the meaning of the Act. Hence this does not appear to be a strong case for requisitioning the premises.

Sd/- P.M.Lad,
18/6.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accommodation) No. 10215, dated the 19th June 1952.

4-Cs.
M.V.V.
20/8.

No. 11813 dt.16.6.52.

Legal Department.

The R.L.A. advised the R.D.(Accom.) in his opinion No. 6978 dated 3.5.51 that the services of the Police Prosecutor are not necessary for presenting the complaint to the Court but for conducting the case the services of the Police Prosecutor attached to that Court may be sought from the H.D. The H.D. was requested by the R.D. (Accom.) to lend the services of the Police Prosecutor for conducting the case. But the H.D. states that the Police Prosecutors in the Greater Bombay are full time Government servants employed on contract basis to conduct cases of the Police Deptt. They are not allowed private practice during the contract period as in the case of S.P.Ps. in Dists. and therefore it will be neither advisable nor feasible to burden them with non-police cases and advises that the services of a Public Prosecutor or a private practitioner may be utilised. The R.D. (Accom.) has accordingly referred the pps. to L.D. for advice as to the further course of action to be taken in regard to engaging the services of a Public Prosecutor or a private practitioner.

Sd/-
17/6/52.

R.L.A. Sd/- P.M.L.
17.6

4-Cs.
M.V.V.
20/8/52.

Office of the R.L.A.

This case ought to be treated as a Police case. It is a prosecution by Government; and the only reason why it is not initiated by the Police is the statutory requirement of complaint by an authorised officer which is found in many enactments. Beyond that stage all work ought to be done by the Police. This cannot be treated as private practice; but should be treated as falling within the scope of a Police Prosecutor's ordinary duty which should be attend to Government's criminal work in Magistrate's Courts.

Sd/- P.M.Lad,
18/6.

Remembrancer of Legal Affairs.

U.R. to R.D.(Accom.), No. 10217, dated the 19th June 1952.

4-Cs.

M.V.V.
20/8.

Office of the R.L.A.

On the representation of the landlord that he is required to comply with the requisition from the Municipality to pull down the newly erected structure, the two rooms were derequisitioned by Government on 5th May 1949. The order of derequisitioning was not, however, enforced and inquiries were made from the Municipality in the matter. The Municipality later on withdrew their requisition and allowed the rooms to stand. It seems that the landlord has sued Shrimati Asarpota, to whom the rooms were allotted, on the basis of the derequisitioning order, treating her as a trespasser. Shrimati Asarpota is not naturally prepared to vacate the rooms. Her grievance is genuine and the landlord's conduct seems to be mala fide inasmuch as he secured the derequisitioning order on the ground that the rooms were to be pulled down and now wants to take advantage of the order (the justification for which has disappeared) and to compel Shrimati Asarpota to exchange the rooms. The landlord should not be allowed to take advantage of the derequisitioning order. The R.L.A. would, therefore, advise that the order of derequisitioning may formally be enforced and symbolic possession of the premises taken from Shrimati Asarpota. The case would then become one of a vacancy; and, therefore, immediately an order of re-requisitioning should be made under section 6 of the Land Requisition Act, 1948. The purpose to be shown in this fresh requisitionign order should be the same as the original one, namely, the public purpose, to wit, housing a homeless person who was also the first informant. The premises may then be allotted again to Shrimati Asarpota who should be informed of this legal position and should be requested to hand over the possession of the premises so that they can be allotted to her immediately. If the landlord takes the matter to the court, as he in all probability will do, we can place the facts before the court and request the court for a stay until the Supreme Court decides the issue of requisitioning in.....

in favour of homeless persons; and the High Court should not ordinarily refuse a stay in this case.

Sd/- P.M.Lad,
3/7.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom.) No. 11060, dated the 4th July 1952.

4-Cs.
M.V.V.
20/8.

Office of the R.L.A.

Bombay Land Requisition Act, 1948.

Sections 8(1) and 15.

Under section 8(1) of the Bombay Land Requisition Act, 1948, power to authorise an officer to determine compensation vests in Governments; and by virtue of Government Notification No.O. 1694/4287/M dated 13-4-1949 issued under section 15 that power of Government has been delegated to the Collectors. The effect of this delegation is that the Collectors can now exercise the power of Government i.e. can now authorise any officer to determine compensation, and such authorisation would not amount to redelegation. The view taken by R.D. (Accommodation) is not correct.

Sd/- P.M.Lad,
9/7.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom.) No. 11372, dated the 10th July 1952.

4-Cs.

M.V.V.
20/8.

L.D.R.I. No.9088,dt. 7-5-52.

Submitted with reference to the R.D. note dated 2-5-52 at pp. 19-21 ante.

Please see the Collector of Nasik's report at p. 1 ante. It appears that the lands in question situated along the Railway line in the Nasik district have been requisitioned under the Defence of India Act in the year 1942-43 by the Special Deputy Collector, Bombay for the Bombay Bhusaval Pipe-line Project. The lands were originally requisitioned for the duration of war and six months thereafter. However by subsequent Govt. orders the lands are continued under requisition till now. The rent for these requisitioned land is assessed and calculated in accordance with the instructions laid down in the Collector of Nasik's order No. LAQ 844 dt, 21.7.44. The rent for the said lands appear to have been paid up to the financial year ending 1949-50. It now appears that the owners of the said requisitioned lands have already taken possession of the said lands and are cultivating them since long. The Collector now proposes to regularise this taking over of the said land by the owners by withdrawing the requisition order in respect of these lands to effect release with effect from 1-4-1950 so that the owners of the said land will then not be entitled to receive the rent for the financial year 1950-51 onwards. This in fact will have the effect of releasing the said requisitioned lands with retrospective effect from 1-4-50. The R.D. office does not seem to agree with the Collector.

The R.L.A. is requested to advise.

Sd/- V.R.C.
26/5.

D.S.(Civil)

4-Gs./M.V.V./20/8

Office of the R.L.A.

Derequisitioning of the lands cannot be made retrospectively. However, no compensation should be paid to the owners of these lands for the year 1950-51 as they were in possession of the lands during that year, for even if they make a claim, Government can make a counter claim for rent by way of damages for that year.

Sd/- P.M.Lad,
13/6.

Remembrancer of Legal Affairs.

U.R. to R.D. NO. 4974, dated the 14th June 1952.

4-Cs.
M.V.V.
20/8.

Office of the R.L.A.

Bombay Land Requisition Act, 1948.
Sects. 5(1) and 6(4)(a).

Mira Centres - Requisition for - Whether a State purpose.

On the assumption that Mira centres are opened and run by Government as a Government concern, the requisitioning of premises for such centres would be for a State purpose under section 5(1) or section 6(4)(a) of the Bombay Land Requisition Act, 1948.

Sd/- P.M.Lad,
4/7/.
Remembrancer of Legal Affairs.

U.R. to R.D. (Accom.) No.11181, dated the 7th July 1952.

4-Cs.
M.V.V.
20/8.

Office of the R.L.A.

The question is whether flat No. 3 on the 1st floor of the Oval View has been occupied by the owner, landlord or the tenant for a continuous period of 6 months so as to operate as bar to the requisition thereof under section 5 of the Bombay Land Requisition Act, 1948.

Shrimati Patel has been using the flat for accommodating paying guests and she herself is staying with her husband in the other flat in the same building. The words "actually resided for a continuous period of 6 months" mentioned in the proviso to section 5(1), excludes any interpretation on the ground of the intention to return or constructive possession. On her own admission the paying guests who were staying there prior to 1st April 1952, were licensees and as such their residence would not operate as a bar to requisition under section 5, provided that the flat was so used for a continuous period of six months.

Sd/- P.M.Lad,
26/6.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accommodation) No. 10614, dated 26th June'52.

4-Cs.
M.V.V.
20/8.

L.D.R.I. No. 4751, dt.7.3.52,

Shri Tawade the landlord of the building named 'Datta Prasad' at Shivaji Park intimated the vacancy of a Block in the said building but requested permission to occupy the same for his bonafide personal requirements. Inquiries were made regarding the premises occupied by him and the number of members in his family and by a letter dt. 8.8.51 permission was given to him to occupy the vacant flat for this personal and bonafied use but in the said letter it was made clear that the permission which was granted was liable to be cancelled for sufficient cause. The landlord reported that he occupied the flat from the 10th August 1951. Thereafter on 18/2/52 an Inspector of the Accommodation office reported that the said block was such as could be divided into 2 rooms each with common bathroom and Privy and that it was not in the bonafide personal use of the landlord but he had given 2 rooms each to Shri Savant who is the brother-in-law of the landlord and to Shri Kabur his friend. The Controller of Accommodation therefore proposes to cancel the permission and to requisition the premises for a Govt. servant. The question for R.L.A's consideration is whether this can be legally done.

Sd/- S.R.P.
19.3

D.S.(Civil)

Sd/- R.T.K./28.3

R.L.A. Sd/- P.M.Lad,
28/3.

4-Cs.
M.V.V.
20/3.

Office of the R.L.A.

Attention is invited to R.L.A's opinion No.16812, dated 29th November 1950. The permission was liable to be cancelled for for sufficient cause and can be so cancelled and the premises requisitioned on the basis of the initial ~~ex~~ vacancy. Moreover, in this case the premises can also be requisitioned on the ground that the landlord himself has not been residing in the block but two other families are residing therein, which means that even if the landlord were to contend that he occupied the block in pursuance of Government's permission, he can be considered to have vacated the block subsequently, and a new vacancy can be deemed to have arisen by reason~~s~~ of his ceasing to occupy the block. On both these grounds a requisition order can be made under section 6(4)(a).

Sd/- P.M.Lad,
17/4.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom.) No. 5839, dated 18th April 1952.

4-Cs.
M.U.V.
20/8.

Office of the R.L.A.

Terminal Compensation

Whether payable to the present owner of the Land.

The land was requisitioned in 1943 under rule 75-A (1) of the Defence of India Rules and it continued subject to requisition under the Requisitioned Land (Continuance of Powers) Act, 1947 even after the lapse of the Rules. Sub-section (1) of section 6 of the said Act provides that in respect of the continued subjection of requisitioned land to requisition under this Act, compensation shall be determined and paid in accordance with the provisions of section 19 of the Defence of India Act, 1939 and of the rules made thereunder. Under the proviso to this sub-section all agreements and awards made under the said section in respect of payment of compensation are continued in force. Sub-section (3) thereof provides that for the purposes of sub-section (1) all the provisions of section 19 and the Rules made thereunder shall be deemed to be continuing in force. One of the conditions subject to which the requisition was made by the order dated the 27th April 1943 reads as follows:-

> "(3) The property shall be restored to the owner as far as possible in the same condition in which it was on the date on which the Military Authorities was put in possession of it and if the property has deteriorated, compensation shall be paid in respect of the deterioration."

The term "owner" has not been defined either in the order or Defence of India Act or the Rules made thereunder, and will have to be given its ordinary meaning, viz., the person in whom is vested the ownership, dominion, or title to property; proprietor. (See Balck's Law Dictionary p. 1311). According to the aforesaid condition compensation is payable to the owner for deterioration of the requisitioned land if the land was restored in a damaged state. It is, however, open to Government

to restore the land to its former condition by carrying out the repairs and if this is done no liability to pay any compensation would arise. There is no question of any vested right to the compensation. All that the owner is entitled to ask is for restoring the land to its original condition. It would be the person who is for the time being the owner of the land who can demand such restoration or in the alternative money value of the labour required for that purpose. The sale deed does not disentitle the purchaser to make such claim, The amount of terminal compensation will, therefore, have to be paid to the vendee Shri Ganpat Gangaram Gaikwad who is the present owner of the land; and such payment will be full discharge of Government's liability and cannot be challenged by a Civil Suit. (See section 9(1) of the Requisitioned Land (Continuance of Powers) Act, 1947). However an indemnity bond should be taken from shri Ganpat before payment is made.

Sd/- P.M.Lad,
28/7.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 12475, dated the 29th July 1952.

4-Cs.
M.V.V.
20/8.

This relates to a notice of suit given by Messrs. Godambe and Joglekar, Solicitors on behalf of their client Mrs. E.D'Silva, challenging the requisition and allotment orders in respect of flat No.2 on the ground floor of Mazagaon Terrace, Bombay. Controller of Accommodation is of the view that the threatened suit, if filed, is defensible.

2. The premises in question were requisitioned by Government Order No. R- 1092 dated 28-4-49 (p.89) under section 6(4)(a) of the Land Requisition Act, 1948, and allotted in favour of Mrs. Burke. It is alleged that the said order is initially erroneous inasmuch as it is signed in blank without any declaration of the date or time on which the flat became vacant as required by section 6, and it refers in a vague term the portion of the flat. It may be stated here that as the exact date on which the vacancy occurred could not be ascertained it was only stated that the premises had become vacant on/or after July 1948. It is, however, true that the order does not clearly specify the protion of the flat No.2 the ground floor of the Mazagaon Terrace requisitioned by Government and, therefore, vague and from the description given in the order it would be difficult to find out the portion requisitioned. The order is likely to be challenged on this ground and also on the ground that the premises are allotted to the first informant. On the second ground it is expected that the decision of the Supreme Court in appeal against the High Court Judgment would be in favour of Government.

Sd/- P.M.Lad,

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom,) No. 12659, dated the 31st July 1952.

4-Cs.
M.V.V.
20/8.

L.D.R.I.No. 18603, dt. 2-8-1952.

Submitted.

In this case room No.18, on the 1st floor of Nathji Building, 3rd Bhoiwada, Bhuleshwar , was requisitioned under sect. 5(1) of the Bombay Land Requisition Act, 1948, for housing a Govt. servant and allotted to Shri T.S. Marathe of the office of the Ex. Engineer, E.D.M., B.S.D. Shri J.V. Thakker who claimed to be the tenant filed a Petition in the High Court. The High Court made the Rule absolute and directed that a writ of mandamus be issued restraining Government from enforcing the order. The High Court held that the order sent by Registered Post was not received by the Petitioner, there was no effective service of the order, that mere knowledge of the order having been passed was not sufficient as he must have knowledge of the contents of the order and, therefore, the requisition is ineffective. R.D. (Accom.) want to know whether it would be legal to cure the technical defect in the proceedings by now serving the order on the petitioner.

Sd/- P.S.Nadkarni
9/8.

4-Cs.
M.V.V.
20/8.

OFFICE OF THE R.L.A.

The judgement in terms says that Government is not entitled to enforce the order and until it is served and the Rule is made absolute to that extent only. There would be no objection to adopt the proposed course, provided the order is otherwise valid.

Sd/- P.M.Lad,
12/8.

Remembrancer of Legal Affairs.

U.R. to R.D. (in Accom.) No. 13291, dated 14th August 1952.

4-Cs.
M.V.V.
20/8.

L.D.R.I. No. 18933, dt.8.8.1952.

Submitted.

Please see R.L.A's opinion No. 12475 dated the 29th July 1952 wherein it has been held that the terminal compensation will have to be paid to the person who is for the time being the owner of the land and that it may be paid to the vendee Shri Ganpat Gangaram Gaikwad after taking an indemnity bond. The R.D. states that Shri Ganpat Gangaram expired on 7-7-48 and has made a presumption that there would be no objection to making the payment to his widow and legal heir Shrimati Mathurbai. The papers are shown to the R.L.A. for confirming the persumption.

Sd/-
12.8

D.S.(Civil) R.T.K. / 12.8

R.L.A. Sd/- P.M.Lad,
18/8.

4-Cs.

M.V.V.
20/8.

OFFICE OF THE R.L.A.

R.L.A's opinion No. 12475 dated the 29th July 1952.

Seen and returned.

The presumption made by the Revenue Department is correct.

Sd/- P.M.Lad,
16/8.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 13462, dated the 18th August 1952.

4-Cs.
[redacted].V.V.
20/8.

R.I.No. 20050
26/8/52.

Submitted.

The R.L.A. is requested to advise whether the requisition premises for the Chaplin of Parel and Bandra would be a public purpose within the meaning of the Bom. Land Requisition Act, 1948. R.D. (Accom.) is of the view that this would not be a public purpose as he is not a Govt. servant and belongs to a section of the public which is similar to others like Doctors and Advocates for whom Govt. is not catering at present. The view taken by R.D. (Accom) appears to be correct and the papers may be seen and returned.

Sd/- P.S.M.
26/8.

Solicitor Sd/- R.D.N./27/8.

R.L.A. Sd/- P.M.Lad,/ 27.8

4-Cs.
M.V.V.
20/8.

Office of the K.L.A.

Seen and returned.

2. The view taken by the Revenue Department (Accom.)is correct. :

Sd/- P.M.Lad,
28/8.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom.) No. 14146, dated the 30th August 1952.

4-Cs.
M.V.V.
20/8.

Office of the R.L.A.

Although housing a refugee who is homeless would ordinarily be treated as a public purpose, in this particular instance, having regard to the fact that Shri Commissariat has spent three years since his arrival from China, it would not be feasible to treat him any longer as a refugee who is homeless and, therefore, requisitioning premises for allotment to him is not likely to be sustained.

Sd/- P.M.Lad,
5/9.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accommodation) No. 14450 dated the 5th September'52

4-Cs.
M.V.V.
20/8.

L.D.R.I.No. 18460, dt. 1.8.52.

The Collector of Poona requisitioned property for the office of the Asstt. Director of Public Health Malaria, Poona Cottage No. 1 in 12 Cannought House, Poona owned by Shri D.B. ~~Shah~~ Sukhia fixed rent at Rs.90/- under his order No. REQ/S.R. 11/17/26 dated 18.11.50 passed in the exercise of powers conferred under section 8 of the Bombay Land Requisition Act, 1948 dated 13.4.1949 at p. 5/C.

But according to the certificate prescribed in the contingent manual rule 112A, the Executive Engineer, Poona Dn. Poona the rent for the Cottage No. 1 has been determined at Rs.40/- p.m. only at p.5/C.

The Director of ~~Health~~ Health Malaria, Poona requested the Collector Poona to reduce the rent from 90/- to Rs.40/- p.m. in view of the certificate of the Ex. Engineer fixing the reasonable rent at Rs.40/- p.m. The Collector has regretted his inability to reduce the rent to Rs.40/- p.m., but has suggested that a revision against his order could be filed in the District Court, if it was so desired vide his letter No. 4808 dated 30.11.1951 at p. 5/C.

According to sub-sect.(3) of sect. 8 of the B.L.R. Act 1948 an appeal against the decision of the requisitioning authority fixing the compensation could be filed within a period of 60 days from the date of the order of the Collector in a District Court.

It appears that the owner of the premises, Shri B.B. Sulkhia accepting the rent of Rs.90/- p.m. exclusive of water and electricity as determined by the Collector executed an agreement in favour of the Govt. and all rent due to him from 25.1.1949 has accordingly been paid to him at Rs.90/- p.m. vide the letter dated 25.6.1952 of the Director of Public Health at p.11

P.T.O.

ante. The papers have been sent to the R.L.A. with a request to advise if anything could be done in the matter at this stage.

Sd/- J.S.Bindra,
13/9/52.

Sd/- P.M.Lad,/15.9
R.L.A.

4-Ca./M.V.V./22.8

Office of the R.L.A.

Nothing can be done in the matter as the appeal period has long expired. If Government considers that the compensation fixed by the Collector is unreasonably high, the proper course would be to dersquisition the premises.

Sd/-,P.W.Lad,
16/9.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 15262/A, dated the 17th September 1952.

4-Cs.
M.V.V.
22/8.

Office of the R.L.A.

Having regard to the fact that Shri Mody has not resided in the flat for a continuous period of six months and also having regard to the fact that Shri Abdul Ali is claiming to be a sub-tenant in respect of a part thereof and is in actual occupation of the whole, it will be feasible to make an order under section 5 of the Bombay Land Requisition Act, 1948. Whether such an order should be made in view of the fact that Shri Abdul Ali has been occupying the Part or the whole of the flat for a long time is a matter which must be left to the judgment of the administrative Department.

Sd/- P.M.Lad,
19/9.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accommodation) No. 15476/E, dated the 20th September 1952.

4-Cs.
M.V.V.
22/8.

R.I.No. 14019 dt.14/7/52.

It appears that the bungalow known as ' Akut's Bungalow ' at Nasik was requisitioned under the Defence of India Rules and it was de-requisitioned by the Collector recently. But he did not hand over actual possession of the bungalow to the land-lady. After consulting the R.L.A. the R.D. issued orders to the Collector to hand over actual possession of the bungalow. The Collector has now reported to Govt. that the land-lady has agreed to take actual possession of a part of the building and symbolical possession of the rest which is now in occupation of the Post Office and the office of the Gangapur Project. The Collector proposes to pass a fresh de-requisitioning order and to hand over formal possession of the bungalow to the land-lady. R.D. approves of the arrangement proposed by the Collector and the papers are shown to the R.L.A.

Sd/- R.T.K.
16.9

R.L.A. Sd/- P.M.Lad,
16.9

4-Cs.
M.V.V.
22/8.

Office of the R.L.A.

Having once issued a de-requisitioning order, it does not appear necessary to issue a fresh de-requisitioning order. It would be sufficient if the Collector now delivers actual possession of a part of the building and symbolical possession of the rest to the land-lady and takes a receipt from her agreeing to the arrangement.

Sd/- P.E.Lad,
17/9.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 15454/A, dated the 19th September 1952.

4-Cs.

M.V.V.
22/8.

R.I.No.22653 dt. 26.9.52.

Submitted.

Please see Judgment of Tendolkar in Misc. Appln. No.128 of 1952 and judgment of the Appeal Court in State of Bombay V. M/S. Absindia Ltd. in the Record of Proceeding forward to the Supreme Court where an appeal has already been filed, R.D. (Accom.) now wants to know whether the premises in question can now be derequisitioned and then re-requisitioned again under sec. 6(4) for housing a Govt. servant. The Solr. in L.D. is requested to advise.

Sd/- P.S.N.
1/9.

Sol. Sd/- R.D.N.
2/12.

4-Cs.

M.V.V.
22/8.

Legal Department.

It is true that the High Court set aside the requisition order on the ground that to accommodate the first informant is not a public purpose; and it would be possible to requisition the premises under section 6(4) of the Bombay Land Requisition Act, 1948, for housing a Government servant. But since Government has filed an appeal to the Supreme Court in this case it is absolutely necessary to maintain status quo. If the premises are derequisitioned the very basis of the appeal would be gone and the cost incurred by Government in filing the appeal will be thrown away. In addition Government will have also to pay the Respondents their costs of the appeal.

Sd/- R.D.N.
3/10.

Solicitor to Government.

U.R. to R.D. (Accom.) No. 16293/E, dated 4th Oct. 1952.

4-Cs.
H.V.V.
22/9.

OFFICE OF THE R.L.A.

The R.L.A. is requested to advise whether to provide office accommodation for the Employees State Insurance Corporation out of the pool of requisitioned premises at the disposal of the State Government would be a public purpose.

2. The Employees' State Insurance Act, 1948 was enacted to provide for certain benefits to employees in case of sickness, maternity and "employment injury" and to make provision for certain other matters in relation thereto. The Employees States Insurance Corporation is constituted by a notification by the Union Government under section 3(1) for the administration of the scheme of Employees' State Insurance and the Corporation is made a body Corporate by sub-section (2) thereof. It will appear from the provisions of the Act that the responsibility for the implementation of the scheme is both of the State Government and the Corporation. (See Sections 4(d), 8(c)(c), 10(1)(d),26(2), 28(v),58-59, 74, 76, 90, 91, 92, 96). In Miscellaneous Application No. 172 of 1952 (Nandkumar Talewalla v. State of Bombay) the High Court has held that to house the Pharmacy Registration Tribunal constituted under a Central Act is a public purpose. Similarly in another case it was held that to requisition premises for a Music Academy would also be a public purpose. There would therefore be no objection to requisitioning premises for accommodating the Employees State Insurance Corporation which is constituted to provide benefits to certain employees in the State.

Sd/- P.M.Lad,
3/10.

Remembrancer of Legal Affairs.

U.R. to R.D.(Accom.) No. 16329/E, dated the 4th October 1952.

4-Cs.
M.V.V.
22/8.

L.D.R.I.No.23912,dt.14.10.52.

Submitted.

2. Attention is invited to R.L.A.'s opinion No.9538, dated the 7th June 1952 wherein it has been held that the assignment in that case of the goodwill of a washerman's business premises to a medical practitioner being a coulourable one, the premises can be requisitioned under sec. 6 of the Bombay Land Requisition Act on the assumption that a vacancy has occurred or as a business premises under section 5. After this opinion was expressed the aforesaid premises have been requisitioned under sec. 6(4) (a) of the Act on the ground that they became vacant in March 1949 for a public purpose, namemly, for housing a Bombay Govt. servant (Pl. see the C. of A's order No. R-4327, dated the 12th Sept. 1952). The R.D. (Accom.) appears to be doubtful whether the premises being business premises could be used for residential purposes after the requisition. The R.L.A. is requested to advise.

Sd/-

4-Cs.
M.V.V.
22/8.

Office of the R.L.A.

Bombay Land
Requisition Act,1948.

Sec. 6(4).

Seen and returned.

The view taken by the Assistant Controlle at A on page 48 ante is correct.

Sd/- P.M.Lad,
20.10

Remembrancer of Legal Affairs.

U.R. to R.D.(Accom.) No.17244/A, dated the 20th October 1952.

4-Cs./M.V.V./22.8

Office of the R.L.A.

The question is not free from doubt. However, having regard to the trend of recent decisions, especially in Indian Estate Ltd. v. State of Bombay (Misc. No.214 of 1952), it would be possible to defend the order of requisitioning premises for Kumari Cabinetmaker Lecturer in the Bombay University.

Sd/- P.M.Lad,
26/10.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom.) No. 17759/E, dated 27th October 1952.

4-Cs.

M.V.V.
22/8.

Office of the R.L.A.

By Bombay Act No. 1 of 1951 the life of the Requisitioned Land (Continuance of Powers) Act, 1947 was extended upto 31st March 1953. In the meantime the Requisitioned Land (Continuance of Powers) Act, 1947 was replaced by the Requisitioning and Acquisition of Immoveable Property Act, 1952. Under section 24(2) of this Act all requisitions under the Requisitioned Land (Continuance of Powers) Act, 1947 are deemed to be requisitions under section 3 of this Act. Under section 5(2) of this Act therefore it would be feasible for the competent authority to order the landlord to execute such repairs as may be necessary and are usually the landlord. Hence it is not necessary to requisition made by the premises under the Bombay Land Requisition Act, 1948 as proposed.

Sd/- P.M.Lad,
20/10.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom.) No. 17245/A, dated the 20th October 1952.

4-Cs.
M.V.V.
22/8.

R.I. No. 24577,dt.22.10.52.

Submitted.

D.S.(Inspection) and the Controller of Accommodation are of the view that although the Controller of Accommodation, the Assistant Controller and Accommodation Officers are empowered under Rule 12 of the Rules of Business made under sec. 59 of the Govt. of India Act, 1935, the powers under sec. 6(4) of the Bom. Land Requisition Act, 1948 will have to be specifically delegated by a notification under sec. 15 of the Act and since the powers are not so delegated all requisition orders issued by these officers are ab initio void. The R.L.A. is requested to advise.

Sd/- R.D.N.
24.10

4-Cs.
M.V.V.
22/8.

Office of the R.L.A.

The view taken in D.S.(I) and the Controller of Accommodation is not correct. The orders issued so far under section 5(1) and section 6(4) of the Bombay Land Requisition Act, 1948, have been issued by the Government of Bombay and are expressed to be so issued in the text of the order. That is why they are expressed to have been issued by order of the Governor of Bombay. The orders being thus orders of Government, and the Controller and the Assistant Controller of Accommodation and the Accommodation Officers having been declared officers for purposes of rule 12 of the Rules of Business, the orders are duly made and dule authenticated. No question of delegation arises; for delegation is intended to confer upon the delegate the power of making the order itself which apparently is not Government's intention.

Sd/- P.M.Lad,
25/10.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 17769/E, dated 27th October 1952.

4-Cs.
M.V.V.
22/8.

No. 20997 dt. 8.9.52.

Submitted.

Please see R.L.A. 's opinion No.11191 dated the 7th July 1952. The Area Land, Hiring and Disposals Officer, Bombay Area, considers that since on 14th March 1952 when the lands were withdrawn from acquisition, the Requisitioned Lands (Condinuance of Powers) Act, 1947 was repealed by the Requisitioning and Acquisition of Immovable Property Ordinance, 1952 and the Collector was not appointed as a "competent authority" under the Ordinance, he was not competent to derequisition the lands on that day. His contention therefore is that the lands are not validy released from requisition and still continue under requisition. The papers are now referred to the R.L.A. for reconsideration in view of these remarks.

Sd/-
10.11

D/S.(Civil)

Sd/- R.T.K./10.11

R.L.A. Sd/- P.M.Lad,
10/11.

4-Cs.
M.V.V.
22/8.

OFFICE OF THE R.L.A.

If as stated by the Area, Lands Hirings and Disposal Officer, Bombay Area, the Collector of Nasik was not appointed as "competent authority" under section 2(b) of the Requisitioning & Acquisition of Immovable Prpperty Ordinance, 1952, he could exercise no powers of derequisitioning under section 6 of the Ordinance on 14-3-1952 and consequently his order releasing the ~~xxxxxx~~ property from the requisition under section 6 of the Ordinance being ultra-vires can be ignored.

Sd/- P.M.Lad,
11/11.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 18802/A, dated the 12th November 1952.

4-Cs.

M.V.V.
22/8.

Legal Department.
R.I.No.19411, dt.16-8-52.

Please see R.L.A's opinion No.6374, dt. 25th April 1952. In that opinion R.L.A. relying on the previous opinion No. 1752, dt. 30-1-51 had advised that the land admeasuring 5929 square yards in Chembur which was requisitioned by the Collector of Bombay for the Central Government for military purposes could not be validly acquired under the authority of the State Government as under section 5 of the Requisitioned Land (Continuance of Powers) Act, 1947 the Central Government alone was competent to acquire it. In view of this legal position, the Collector of Bombay was informed by the Home Deptt. that the acquisition notice issued by him was ultra vires as he had requisitioned the the land as the delegates of the Central Government and the notice should therefore, be cancelled. The Collector was further informed by the Home Deptt. that as the Requisitioned Land (Continuance of Powers) Act has lapsed since 1-4-52 it is no longer necessary to formally derequisition the lands; but as the lands are still required by this Government, steps should be taken to acquire the lands under the urgency clause of the Land acquisition Act, 1894 for the purpose of the Beggars Home. The Collector has however pointed out that the structure on the land constructed by Government is still existing and in view of this it would not be possible to apply the urgency clause and that the acquisition proceedings will have to be initiated under section 4 of the Act. The Collector however is of the opinion that the presumption made in para. 2 of the Government's letter at p.335 that the Requisitioned Land (Continuance of Powers) Act,1947 has lapsed on 1-4-52 and that this land is no

longer under requisition is not correct and that all lands which were subject to requisition under the Requisitioned Lands (Continuance of Powers) Act have been continued to be subject to requisition under section 24 of the Requisitioning and Acquisition of Immovable Property Act, 1952. The Collector therefore states that if this view is accepted the land would continue under requisition till it is taken over formally under the Land Acquisition Act and the requisition order can be cancelled on the date on which possession is taken by the Land Acquisition Officer. The Home Deptt. thinks that the Act XXX of 1952 refers to requisition for purposes of union only. The R.L.A. is therefore requested to advise in the matter.

Sd/-

4-Cs./M.V.V./22.8

Office of the R.L.A.

The view taken by the Collector that all the requisitions made by the Central Government which were continued under the Requisitioned Land (Continuance of Powers) Act, 1947, were continued under section 24 of the Requisitioning and Acquisition of Immovable property Ordinance 1952 and Act 1952 is correct. However, recourse cannot be had to section 7 of the Requisitioning and Acquisition of Immovable Property Act, 1952, for the purposes of acquisition since the public purpose for which acquisition can be made must necessarily be a Union purpose, whereas the lands are required for a purely State purpose, namely, the Beggard Home at Chembur. Neither can the lands be acquired by this Govt. under the Requisitioned Land (Continuance of Powers)(Bombay Amendment) Act, 1951 (Bom. I of 1951) as under that Act only those lands could be acquired which could have been requisitioned by the State Govt. had the provisions of the Constitution been in force on the day of requisitioning. In this case the lands were requisitioned for securing public safety and efficient prosecution of the war and were delivered to Commander H.Q. 108 L. of C Area and were actually being used by the Garrison Engineer. This purpose being purely a Central purpose, it would not be possible to avail of the provisions of Bombay Act I of 1951 for the purpose of acquiring these lands by the State Government for a State purpose.

The only course would therefore be to request the Central Govt. to release the land from requisition and to requisition them under section 7(1) of the Bombay Land Requisition Act, 1947, and thereafter it may be acquired under the Land Acquisition Act. As opined by the R.L.A. in his opinion No. 5291 dated 2.4.51, it is not an essential pre-requisite of an order under sec.7(1) that the premises should first be released from requisition. An order under sec.7(1) can, therefore, be passed and thereafter the Govt. of India may be asked to derequisition it.

Sd/- P.M.Lad,/29.9
Remembrancer of Legal Affairs.

U.R.L. H.D. No. G-497, dated the 1st Oct. 52.

Office of the R.L.A.

Bombay Land Requisition Act, 1948.

In Misc. Appln. No. 164 of 1952 in the case of Mohanlal Kapur v. The State of Bombay Tendolkar J. has held that an offer of a more suitable or economical accommodation to a Government servant than the accommodation which is at present at his disposal is in itself not a public purpose under the Bombay Land Requisition Act, 1948. However an appeal against the decision in that case has been filed and is now pending before the High Court, and pending that appeal, if the case be clear, the former policy may continue to be followed.

Sd/- P.M.Lad,
14/11.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom.) No. 19031/A, dated the 15th Nov.52

4-Cs.

M.V.V.
22/8.

Submitted with reference to R.L.A's note dated 24-10-52 at p. 112 ante.

2. The question as to what is a public purpose came up for decision before the Madras High Court, also, under the Land Requisition Act, in the Secretary of State for India v. Gopala Aiyar, 59 Mad. L.J. 274. In that case Government had requisitioned Land to provide house sites for Panchamas of Tanjore and it was alleged that since this benefitted only a section of the public the acquisition was not for a public purpose. Venkatasubba Rao J. who decided the case set out the result of the examination made by the Madras Government of the needs of the Panchama and their conclusions based thereon and then proceeded to observe at p. 276 as follows:-

'The Government in order to remove the dis-abilities under which the depressed classes labour has undertaken to provide them with house-sites. The condition of the Panchamas calls for its intervention. The measures adopted, while directly benefitting the Panchamas, indirectly benefit the public at large. Even if only a section of the public is benefitted, still the purpose is a public purpose. The expression includes a purpose in which the general interests of the community, as opposed to the particular interests of the individuals is directly and vitally concerned. (See Nawabai Petit vs. Secretary of State for India). If the purpose in question is not a public purpose I fail to see that can possibly answer that description.'

P.T.O.

Although Tendolkar J. in Nazimuddin J. Bhimani v. State of Bombay (Misc. No. 108 of 1951) accepted this decision as correct he did not accept it as laying down the proposition that an indirect benefit to the public at large would constitute a public purpose when the direct benefit was only to an individual or a limited number of individuals. Mahajan of Supreme Court in the Province of Bombay v. Advani, 53 Bom. L.R. at p.17 observes as follows:-

"No precise definition of the phrase 'public purpose' can be attempted and none has been given in judicial decisions. It was, however, observed in Nawabai Framjee Petit v. Secretary of State for India, that in order to constitute a public purpose in taking land it is not necessary that the land when taken is to be made available to the public at large, but that it includes a purpose, that is an object, in which the general interest of the community as opposed to the particular interest of the individuals is directly and vitally concerned. It was said in that case that prima facie the Government are good judges of the question whether the purpose is one in which the general interest of the community is concerned, but that they are not absolute judges, that is, they cannot say, 'I desire it, therefore, I order it'. "

Mukherjee J. at p. 31 observes as follows:-

"A public purpose involves some benefit to the community as a whole, as opposed to the personal gain or interest of particular individuals. Housing of refugees may certainly be a public purpose, and under certain circumstances even securing a house for an individual may be in the interest of the community, but cannot be to general interest of the community to requisition the property of one refugee for the benefit of another refugee".

Applying these principles, Tendolkar J. held that

..requisitioning premises for a person without any accommodation would be a public purpose. But in the case of Khanji Munji v. State of Bombay (Appeal No. 8 of 1952), the High Court has held that requisitioning for the purpose of accommodating a person without accommodation but on the ground that he is a first informant would be discriminitory. This appeal is now the subject matter of an appeal to the Supreme Court. In Shrimati Jagwant Kaur Kesharing Dang v. State of Bombay (C.A.No.773 of 1953) 1 The High Court has held that requisitioning land for the establishment of Kashiwadi Harijan Colleny in the Poona City would be discriminatory within the meaning of Art. 15(1) of the Constitution. This decision is no longer good in view of amendment made to Art. 15. Acquisition of land under the Land Acquisition Act for a co-operative Society for building houses has been held to be an public purpose in view of the fact that a co-operative Society is specifically recognised in secs. 3(3) and 39 of that Act. No such provision is made for a co-operative society in the Bombay Land Requisition Act. However, in Indian Estate Ltd. vs. State of Bombay (Misc.No.214 of 1952) the Tendolkar J. has held that requisitioning for accommodating 'Classical Music of India' a cultural organisition engaged in the propogation of Indian Music is a public purpose, and observed :

" It is sufficient if I come to the conclusion that Government in taking the view that a cultural organisation engaged in the propogation of Indian music served a public purpose were not acting arbitrarily or capriciously nor was their judgment obviously unreasonable or unsustainable. Promotion of education in any branch of knowledge, art or science has always been looked upon as a public purpose, and I cannot see why an organisation

P.T.O.

engaged in the propogation of Indian Music should not reasonably be considered to be an organization which serves a public purpose. It is urged that in any event the organisation is run for private profit. A similar contention had been raised before me in Misc. No. 63 of 1951 where the premises had been requisitioned for running a gymnasium and in my judgment delivered on the 28th of November 1951 I observed:-

"It is quite possible that an object which serves a legitimate public purpose may at the same time enure for the benefit of a private individual; but, thereby the existnece of the public purpose is not destroyed. Under the Fifth Amendment of the Constitution of the United States of America private property cannot be taken except for public use and it has been held that where property is taken for the purpose of a private school it would be for public use because schools are calculated to benefit the general public. A physical cultural institution serves in the sphere of physical education the same purpose as a school does in the matter of intellectual training. I have no doubt in my mind that a physical culture institution serves public interest, and therefore the running of physical culture institution is a public purpose. It does not cease to be a public purpose by reason of the fact that a private individual derives some benefit out of it."

"Those observations, in my opinion, apply with equal force to the present case. The propogation of Indian music, in my opinion, serves a public interest in the same way as the propogation of education does, and therefore, the running of an organization for the propogation of Indian music serves a public purpose."

Similarly in R.S. Nanjee v. State of Bombay(Misc. No.216 of 1952) Tendolkar J. has held that requisitioning land for the use of the Bombay State Road Transport Corporation would be a public purpose; and in Nandkumar Taliwala v. State of Bombay (Misc. No. 172 of 1952) he held that requisitioning for the use of Pharmacy Registration Tribunal would be a public purpose. In Ali Gulshan v. State of Bombay (Misc. Appln. No. 14 of 1952) it was held that requisitioning for housing a member of the foreign consul would also

be xxxx public purpose. It would be clear from the trend of these High Court decisions that requisitioning premises for accommodating the members of a co-operative society of nurses who really belong to the essential services can be considered to be a class distinguishable from the rest of the public and providing accommodation to members of such a society might be considered to be a reasonable basis and not discriminatory.

Sd/- P.S.Nadkarni.
28/10.

R.L.A.

4-Cs.
M.V.V.
22/8.

Office of the R.L.A.

Requisition for co-operative Society of Nurses.

Whether a public purpose.

Having regard to the trend of recent decisions it is likely that the High Court may hold that allotment of accommodation to the Co-operative Society of nurses is a public purpose.

Sd/- P.M.Lad,
29/10.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom.) No. 17973/A, dated the 30th October 1952..

4-Cs.
M.V.V.
22/8.

No.27542-A
13.11.1952.

Submitted.

It appears that on 30-6-1948 12 Rooms on the 1st floor of Noor Building, Tulsi Pipe Road, Dadar were requisitioned by Govt. under sec. 6(4)(a) of the Bom. Land Requisition Act, 1948 and allotted to the Sind Model High School. The accommodation allotted to the School being surplus, 3 of the 12 rooms were allotted to the Dadar Dist. Congress Committee. The Dadar Dist. Congress Committee is willing to surrender two rooms out of three and it is proposed to re-allot one to the School and the other to the B.B. & C. I. Rly. Employees' Association which came into possession of the room with the leave and licence of the Committee. The question now raised is whether it would be a public purpose to allot the room already in its occupation to the B.B. & C.I. Rly. Employees' Association and if not whether both rooms can be allotted to the School.

The order of requisition in this case was issued prior to the amendment of sec. 6(4)(a) and does not specify any particular purpose. It will therefore be open to Government to allot the premises for any purpose provided it is a public purpose.

Sd/-

4-Cs.
M.V.V.
22/8.

OFFICE OF THE R.L.A.

The order of requisition in this case was issued prior to the amendment of section 6(4)(a) of the Bombay Land - Requisition Act and does not specify any particular purpose. It will therefore be open to Government to allot the premises for any purpose provided it is a public purpose.

2. In view of Tendolkar J's decision in Miscellaneous No. 216 of 1952 (R.S. Naik v. State of Bombay) where he has held that an enducational institution is a public utility concern, requisitioning and allotment of rooms to the Sind Model High School is likely to be held to be a public purpose. Similarly the B.B. & C.I.Railway Employees' Association being an institution which caters for the welfare of the railway employees in the economic sphere providing accommodation is likely to be held a public purpose.

Sd/- P.M.Lad,
26/11.

Remembrancer of Legal Affairs.

4-Cs.
M.V.V.
22/8.

No. 20998 dt. 6/9/1952.

It appears that S.Nos. 107/2, 114/1, 114/4 and 114/5 of Kanjur village were requisitioned under rule 75A of the Defence of India Rules in the year 1943 for military purposes and have been acquired in October 1948 under section 5(1) of the Requisitioned Land (Continuance of Powers) Act, 1947. The Collector of Thana has reported that the compensation payable in respect of the acquisition of these lands has been wrongly paid to Shri M.P. Jassawala who was not entitled for it and has requested that the matter may be referred to the R.L.A. for his opinion on the points whether (1) the Collector can revise the order whereunder the payment of the compensation was directed to be paid to Shri Jassawala; and (2) whether the money wrongly paid can be recovered and under what provisions of law. The only question raised by the R.D. for R.L.A.'s consideration is whether the view taken by the R.L.A./ in his opinion No. 8421 dated the 20th May 1952 that the amount paid in excess due to a mistake in calculation of the compensation cannot be recovered as an arrear of land revenue, holds good in this case also.

Sd/-

4-Cs.
M.V.V.
23/8.

Office of the R.L.A.

The R payment made to the wrong party in the present case can be recovered only through civil court.

Sd/- P.M.Lad,
18/11.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 19247/A, dated the 18th November 1952.

4-Cs.
M.V.V.
23/8.

Legal Department.

It is true that in order that the lessees who are Parsees, may not be embarrassed by Government allotting the flat to a non-Parsee that it has been decided that as far as possible the requisitioned premises in such buildings should be allotted to Parsis only. In this particular case, the premises were in the first instance allotted to a non-Parsee and if there are no Parsees on the waiting list there is no legal objection to allotting the premises to another non-Parsee as proposed at 'A' of R.D. note dated 29-11-1952. From a strict legal point of view, the premises being under requisition the lessees of the flat cannot be held liable for ~~mmk~~ non-compliance with the conditions of the Deed of Covenant executed between the lessors, lessee and Bombay Municipality.

Sd/- R.D.M.
18/12.

Solicitor to Government.

U.R. to R.D.(Accommodation) No. 21306/E, dated the 18th December 1952.

4-Cs.
M.V.V.
23/8.

L.D. R.L.NO. 1374 confl. dated 5th Dec. 1952.

Submitted.

Certain lands in South Salsette Taluka were notified for acquisition under section 6 of the Land Acquisition Act, 1894, on behalf of the Rare Earths Ltd. All the lands except S.No. 185-B-1 are now found to have vested in Government by virtue of the Salsette Estates (Land Revenue Exemption Abolition) Act and it is proposed to cancel the final notification and to ask the Collector to hand over possession to the Company. As regards S.No. 185-B-1 it is stated that it contains buildings and therefore it has been notified under section 6 without the urgency clause. It is also stated that the company is pressing for possession but the Additional Special Land Acquisition Officer has informed Government that the declaration of award is likely to take at least a month. In these circumstances,, the Collector wants to know whether the land cannot be requisitioned for the Company and possession thereof handed over to it. The R.L.A. is requested to advise.

Sd/-

4-Cs.
M.V.V.
23/8.

Office of the R.L.A.

Certain lands in South Salsette Taluka were notified for acquisition under section 6 of the Land Acquisition Act, 1894, on behalf of the Rare Earths Ltd. All the lands except S. No. 185-B-1 are now found to have vested in Government by virtue of the Salsette Estates (Land Revenue Exemption Abolition) Act and it is proposed to cancel the final notification and to ask the Collector to hand over possession to the Company. As regards S.No. 185-B-1, it is stated that it contains buildings and, therefore, it has been notified under section 6 without the urgency clause. It is also stated that the company is pressing for possession but the Additional Special Land Acquisition Officer has informed Government that the declaration of award is likely to take at least a month. In these circumstances, the Collector wants to know whether the land cannot be requisitioned for the Company and possession thereof handed over to it. The R.L.A. is requested to advise.

2. Under section 5(1) of the Bombay Land Requisition Act, 1948, if in the opinion of the State Government it is necessary or expedient so to do, the State Government may be order in writing requisition any land for the purpose of the State or any other public purpose. The proviso to this sub-section enacts that no building or part thereof wherein the owner, the landlord or the tenant, as the case may be, has actually resided for a continuous period of six months immediately preceding the date of the order shall be requisitioned under this section. It is presumed that the proviso does not come into play in the present case. If this be so, there would be no objection to requisition the lands in question under the Land Requisition Act, 1948, for a public purpose. Government had already agreed to acquire the

Land.....

...land for the company. It is, therefore, clear that Government is satisfied that acquisition for the Company will prove useful to the public. Requisitioning for the same Company will, therefore, also be deemed to be a public purpose. In R.S. Nanjee v. The State of Bombay (Misc.No.216 of 1952) Tendolkar J. held, "Since the Corporation is a public utility concern, there can be no dount that providing accommodation for the Corporation as such would serve a public purpose." A similar reasoning will apply to the present case and there would be no objection to requisition the lands in question till they are acquired under the Land Acquisition Act.

3. R.L.A's opinion No. 20407 dated the 21st December 1951 can be distinguished for in this case acquisition proceedings have already started so that there is a clear declaration of the intention to acquire the property and pay the statutory compensation therefor. The requisition has become necessary because the urgency clause cannot be applied and temporary possession of the structures has to be secured until as a result of the acquisition proceedings permanent possession is given. Securing temporary possession by means of requisition would in no way prejudice the owner since he will get compensation for the requisition which is quite distinct from the compensation for the value of the structures. The acquisition itself being for a public purpose, it is likely that the requisition with a view to take temporary possession in this manner would also be treated as a public purpose and would be competent. It should, however, be noted that requisition merely facilitates entry on the land and does not authorise destruction of structures thereon.

Sd/- P.M.Lad,
12/12.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1380/A-Confl., dated the 12th December 1952.

4-Cs./M.V.V./23.8

Office of the R.L.A.

Bombay Land Requisition Act,1948.

Sections 8(1) & 8-B.

The following comments are made on the points raised by the R.D. Accommodation.

Point (1) - Under the terms of section 8(1) of the Bombay Land Requisition Act, 1948, compensation is payable for use and occupation of the requisitioned land only when any land is requisitioned or continued subject to requisition. The liability of Government to pay compensation would arise only from the date of requisition and no claim for any anterior period would be tenable. The practice of entertaining such claims from the date of intimation of vacancy is wrong.

Point (2) - This point relates to the liability for payment of compensation during the interval between the date when a previous allottee vacates the premises and the date when such premises are allotted to another person. Sub-section (2) of section 8B contemplates a formal order embodying the terms and conditions subject to wheich the allottee may be allowed to hold the lands. The compensation payable by an allottee would have to be fixed as one of the terms of the occupation. Ordinarily such compensation should commence to accrue from the time possession has been handed over to the allottee. There would, however, be no objection to Government imposing a condition on the new allottee of paying compensation for the period prior to his entering into occupation. These are matters to be settled under the terms and conditions subject to which the allottee whose position is that of a licensee of Government, may be allowed to occupy the premises. During the period of requisition the liability for payment is not suspended at any time until the premises are de-requisitioned; and it is not understood what is meant by "if ..... it cannot be passed on to either landlord etc." Subject to this the marginal

....comments on point 2 are generally correct.

Point (3) - The position of the allottee is that of a licensee of Government in respect of the premises which he is allowed to occupy, and he is not concerned in any way with the landlord. A notice by the allottee to the landlord would therefore be misconceived. Besides, notice to quit as is required under the general law of landlord and tenant is not necessary in such cases , and the landlord cannot claim any compensation for want of such notice to him by Government before derequisitioning the premises. However, he is entitled to compensation till the premises are actually derequisitioned and restored to him. In case (i) the compensation payable to the landlord should be recovered from the Government servant. In case (ii) the deposit before permitting the allottee to occupy should be made liable to pay compensation upto the limit of the deposit amount. Government should not unnecessarily undertake the responsibility to pay compensation unless all means are exhausted.

Point (4) - As stated above the liability of Government commences to accrue with effect from the date of requisition and at no time earlier. Handing over the key or possession of the vacant premises by the landlord to Government would not by itself impose on Government the liability to pay compensation under the Act from the date of such delivery unless a requisition order is issued; and such possession should not be accepted on behalf of Government. If the requisition order is challenged in a Court of law and a stay order is issued no compensation would be payable until the stay order is vacated. Subject to this, the view taken in the marginal notes on this point is correct.

Sd/- P.M.Lad,
29/12.
Remembrancer of Legal Affairs.

U.R. to R.D. No. 22101/A, dated the 30th December 1952.

4-Cs./M.V.V./23.8